IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 15613 of 2004

Between:

1 Mohd. Abdul Hafeez, S/o Mohd. Osman,
R/o H.No. 10-1-17/A/D, Masab Tank, Hyderabad.
2 Smt. Muneer Sultana, W/o Mohd. Abdul Hafeez,
R/o H.No. 10-1-17/A/D, Masab Tank, Hyderabad.

..... PETITIONERS

AND

1 The Assistant City Planner, Abids, Circle No.6, T.P. Section,
Municipal Corporation of Hyderabad, Hyderabad.
2 The Commissioner,
Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents dated 25-8-2004, in threatening to demolish the Premises Nos. 5-7-12, 5-7-12/A and 5-7-12/B of 1st Petitioner 5-7-12/C & 5-7-12/D of 2nd Petitioner, situated at Darusalam Road, near Ek Minar-ki-Masjid, Nampally, Hyderabad, as illegal arbitrary null and void and in violation of Sections 146 and 147 of H.M.C. Act and the Judgment in W.P.No.3052 of 2003 dated
19-2-2003, and consequently direct the Respondents not to demolish the above premises without following the due process of law.

For the Petitioners: MR.S.M.ALI, Advocate

For the Respondents: MR.RAMA RAO GANTA, S.C for Municipal Corporation of Hyderabad

The Court made the following ORAL ORDER:

Heard the learned counsel for the petitioners and Sri G. Rama Rao, learned Standing Counsel for the respondent-Corporation and at their request, the matter is taken up for final disposal at the stage of admission.

Rule Nisi.

The first petitioner claimed to be the owner of the premises bearing Nos. 5-7-12, 5-7-12/A and 5-7-12/B situated at Darusalam Road, near Ek Minar-ki-Masjid, Nampally, Hyderabad and the second petitioner claimed to be the owner of the premises bearing Nos.5-7-12/C & 5-7-12/D situated at Darusalam Road, near Ek Minar-ki-Masjid, Nampally, Hyderabad. They filed the present writ petition questioning the action of the respondents in proposing to demolish their premises for the purpose of widening of the road, without following due procedure as contemplated under the Hyderabad Municipal Corporation Act,1955 (for short “the Act”)

It is well settled by a catena of decisions of this court that the property of the citizens for widening of the roads can only be acquired by following the due procedure contemplated under Section 146 of the Act. If the owners are not willing to give consent for such acquisition, it is open for the Corporation to proceed under Section 147 of the Act by initiating proceedings under the Land Acquisition Act, 1894 and can take possession of the property by paying the market value of such property.

In view of the same, if the petitioners are not willing to agree for acquisition by negotiation, the premises Nos. 5-7-12, 5-7-12/A, 5-7-12/B and 5-7-12/C & 5-7-12/D respectively situated at Darusalam Road, near Ek Minar-ki-Masjid, Nampally, Hyderabad of the petitioners shall not be demolished, without following the procedure as contemplated either under the Hyderabad Municipal Corporation Act, 1955 or under the Land Acquisition Act.

With the above direction, the writ petition is disposed of. No costs.

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A.Gopal Reddy, J

Date: 01.09.2004

Va/ghn

To

1 The Assistant City Planner, Abids, Circle No.6, T.P. Section,
Municipal Corporation of Hyderabad, Hyderabad.
2 The Commissioner, Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad.
3 Two CD Copies